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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In The Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	**PR Docket No. 93-144 RM-8117, RM-8030 RM-8029**
and		
Implementation of Section 309(j) of the Communications Act Competitive Bidding 800 MHz SMR	)	**PP Docket No. 93-253**

To: The Commission

COMMENTS
OF
UNITED STATES SUGAR CORPORATION

United States Sugar Corporation ("U.S. Sugar"), by its attorneys, hereby respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Federal Communications Commission ("FCC or Commission") on October 20, 1994, in the above-styled proceeding.[1/]

I. PRELIMINARY STATEMENT

1. U.S. Sugar is America's largest producer of sugar cane, and one of the country's leading diversified,

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1/ 59 Fed. Reg. 60111 (November 22, 1994).

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privately-held agricultural firms. Its primary business interests, other than sugar cane production, include citrus fruits, vegetables and, to a lesser extent, plastics. All of the company's operations are situated in South Central Florida. From its headquarters in Clewiston, Florida, U.S. Sugar maintains 180,000 acres of sugar, citrus and vegetables in Hendry, Glades and Palm Beach Counties.

2. U.S. Sugar operates a 21-channel Specialized Mobile Radio ("SMR") system with coverage limited to the Clewiston area. The system is used for internal communications to support general operations, including the dispatch of personnel, equipment and supplies required in the cane and vegetable fields, and citrus groves. Excess capacity on the SMR system is leased to small businesses and public safety entities in the Clewiston area. Approximately 88 paying subscribers comprised of local agricultural businesses, law enforcement agencies, and small trucking and construction companies use the system predominately for dispatch services, employing almost 800 of the system's approximately 1,350 mobile units. Approximately 13% of this leased capacity is interconnected with the public switched telephone network -- a testament to the existence of several alternatives to U.S. Sugar's SMR system for mobile access to the local and interexchange telephone services. U.S. Sugar's SMR system generates an annual revenue of

approximately $155,000 from the provision of service to local entities. This revenue is of virtually no significance to the financial interests of the corporation, but U.S. Sugar makes service available because it has the excess capacity and it benefits the community.

3. U.S. Sugar's 800 MHz telecommunications system is the epitome of the traditional SMR system, designed to provide dispatch service to a single, well-defined locale. It is unfortunate that on August 10, 1996 this small system will be reclassified as a commercial mobile radio service ("CMRS") provider simply because it marginally, but literally, meets the criteria presented in Congress' three-prong test for determining CMRS status.[2/]

4. The purpose of the Further Notice is to solicit comments on how the FCC should implement a new framework for licensing and operating SMR systems in the 800 MHz band. The FCC asked for comment on plans to place 800 MHz SMR channel numbers 401-600 into an "upper block" primarily for use by wide-area SMRs on a Major Trading Area ("MTA") basis,

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[2/] Section 332 defines CMRS as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Communications Act of 1934, as amended, § 332 (d) (1), 47 U.S.C. § 332(d)(1).

and 80 non-contiguous channels in a "lower block" that would be dedicated for local systems.

5. The FCC seeks to treat wide-area SMRs in the same fashion as similar CMRS providers in order to meet the Congressional mandate for regulatory parity for all CMRS providers. The Third Report and Order,[3/] released by the FCC on September 23, 1994 in the Docket No. 93-252 matter, was adopted to satisfy requirements imposed by the Omnibus Budget Reconciliation Act of 1993[4/] that the FCC implement changes to its technical, operational and licensing rules to establish regulatory symmetry among similar CMRS providers. In that Third Report and Order, the FCC stated that 800 MHz SMRs compete, or have the potential to compete, with wide-area CMRS providers, but that the interests of small SMRs need to be considered.[5/] In the Further Notice, the FCC proposed rules to implement regulatory parity while meeting the needs of small SMR systems.

6. U.S. Sugar is very concerned with certain elements of the proposal because the migration or "retuning" plan is

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[3/] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services.

[4/] Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 317, 392 (1993).

[5/] Third Report and Order at 55.

ultimately mandatory in character. U.S. Sugar opposes mandatory retuning because it places small SMRs at a distinct operational and negotiating disadvantage, and because many of the more vexing complexities involved in implementing any successful and fair "retuning" plan do not appear to have been considered by the Commission, let alone addressed in the Further Notice.

II. COMMENTS

A. Mandatory "Retuning" Is Not The Answer

7. The principal proposal advanced in the Further Notice is to designate 10 MHz of contiguous 800 MHz SMR spectrum, from the "upper block" (channel nos. 401-600), for wide-area SMR licensing in four 2.5 MHz blocks per MTA. The Commission proposed that incumbent systems in this upper block of spectrum be retuned to the lower block to accommodate the "MTA licensees."

8. The plan states that mandatory relocation of incumbent systems presently operating in the MTA blocks should be avoided, if possible.[6] Accordingly, the Further Notice described inducements to facilitate voluntary relocation. Unfortunately, the plan also contains a mandatory relocation clause that becomes operational should

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[6] Further Notice at 21.

voluntary relocation negotiations fail.[7] After three years have expired, the proposed plan allows the MTA licensee to request that a mandatory incumbent relocation policy take effect.[8]

9. U.S. Sugar opposes the adoption or implementation of any mandatory relocation plans. U.S. Sugar recognizes that there are strong competitive and financial factors that favor use of spectrum auctions. Yet, it is U.S. Sugar's opinion that the success of auctions does not hinge on mandatory relocation and that small SMRs' entitlement to certain "basic dignities" must not be overlooked by the evident auction fervor. First, the Budget Act did not direct the FCC to implement competitive parity between cellular, wide-area SMR, PCS and other technologies at the expense of destroying the viability of the traditional SMR industry. Second, small incumbent SMRs have legitimate operating needs and growth expectations which serve the public interest, are ongoing, and should not be regulated out of existence. Mandatory movement to an inferior spectrum location potentially plagued by equipment difficulties, limited future growth patterns and other problems, obviously harms small SMRs. Mandatory retuning

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[7] Further Notice at 22-23.

[8] Id.

saddles the incumbent SMR with the burden of substantiating inequities and losses. Thus, small SMRs, who are often on limited budgets, are pitted against large communications corporations in attempting to prove that the proposed retuning plan is not fair.

10. Finally, the viability of spectrum auctions would not be derailed by the lack of a mandatory retuning provision. Attractive and reasonable voluntary relocation incentives will prompt many small SMRs to move to the lower block. However, the certainty of mandatory relocation places incumbent SMRs at a distinct negotiating disadvantage. Simply put, a fair system would allow the market to decide whether the voluntary relocation incentives offered by the MTA SMR are reasonable. Mandatory retuning is not the proper vehicle for engendering incumbent movement from the upper block to the lower block.

B. If Mandatory Relocation Occurs, Relocated Licensees Must Be Able To Operate "Dual" Systems During the Transition Period

11. In the event that U.S. Sugar is forced or agrees to "retune" its system, all <u>1,350</u> of its mobile units would have to be reprogrammed. The logistic and engineering scope of a transition is formidable and such a venture <u>cannot</u> be completed in a few days. In order to prevent a system

shutdown, U.S. Sugar must be given the opportunity to reprogram all of the vehicular and portable units from the old "upper block" frequencies to the "lower block" frequencies in a piecemeal fashion. This will ensure continuous operations. U.S. Sugar's operations and those of its community customers, such as law enforcement agencies, cannot afford a transition plan which lacks flexibility and denies communications, even temporarily. Therefore, because U.S. Sugar would be forced to "retune" 15 channels, it must have 15 properly engineered and licensed channels ready for simultaneous operation in the lower block before the transition from the upper block could even begin. This dual system would have to be available to U.S. Sugar for six months.[9] The dual system requirement cannot be avoided without irreparable injury to U.S. Sugar and its customers.

C. Incumbents Subjected to Mandatory Relocations Are Entitled to Premium Payments

12. Of course, all of the costs related to the transition, including regulatory fees, equipment charges and maintenance, engineering, labor, and customer education, would have to be covered by the MTA licensee. Moreover, because such a mandatory transition would greatly tax

[9] U.S. Sugar estimates that the entire transition would take six months.

incumbent SMR resources in other innumerable and often uncalculable ways, a "premium" payment of 20% of the total calculable cost of the transition should have to be paid by the MTA licensee to the relocating incumbent.[10/] This premium payment could also take the form of additional channels or improved facilities, upon the incumbent's approval.

III. CONCLUSION

13. Congress did not instruct the FCC to restrict the growth and viability of the small SMR industry in order to create regulatory parity between wide-area SMRs, cellular, PCS, and other commercial mobile radio services. Mandatory relocation of small SMR incumbents would harm the public interest by placing an undue burden on small SMRs through imposition of an imbalanced bargaining structure, the unwarranted disruption of services, potential equipment difficulties, and placement in less desirable spectrum with limited potential for future growth. Regardless of whether the FCC adopts a mandatory relocation policy, incumbent licensees must be able to operate "dual" systems during the transition period, one in the upper block and one in the lower block. Without the opportunity to operate dual

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[10/] See, NPRM at ¶ 36, for discussion of "premium" concept.

systems a viable transition cannot occur. Should mandatory relocation be implemented, the MTA licensee must remit to the incumbent a premium payment above and beyond the calculable relocation costs.

WHEREFORE, THE PREMISES CONSIDERED, United States Sugar Corporation respectfully submits the foregoing Comments and requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

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